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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/879,794  | 06/11/2001  | John M. Krochta      | 02307O-114410US     | 3739             |
| 20350   | 7590        | 05/19/2004           | EXAMINER            |                  |
| TOWNSEND AND TOWNSEND AND CREW, LLP<br>TWO EMBARCADERO CENTER<br>EIGHTH FLOOR<br>SAN FRANCISCO, CA 94111-3834 |             |                      | PADEN, CAROLYN A    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1761                |                  |

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/879,794             | KROCHTA ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Carolyn A Paden        | 1761                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☒ Claim(s) 1-6, 21-26 and 31 is/are rejected.
- 7) ☒ Claim(s) 7-1, 26-305 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not seen that any and all cereal products would have an increased bowl life after treatment with water. It is not seen that oatmeal or rice would have an improved bowl life as a result of the claim process. An amendment to the claim specifying the type of cereal to be processed would overcome the rejection. Specifically an amendment to the claim inserting the substance of claim 7 into claim 1 would overcome the rejection.

Claims 7-15, 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-20 are allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloch.

Bloch discloses treating pistachio nuts to remove the shells. The shelf-life of the nuts may be improved by the addition of preservatives to the treatment water (column 2, lines 64-68). The nuts are treated by placing the nuts in water and subjecting them to water under superatmospheric pressure for a period long enough to split the shells of the nuts. After the shells are removed, the nuts are then dried to a 6% moisture content. The claims appear to differ from the reference in the recitation of drying the nuts back to their original moisture content because the original moisture content is not given. But harvested nuts are known to have a known moisture content. It is appreciated that spraying water over the nut is not disclosed in the reference but no unobvious or unexpected result is seen from the way the water contacts the nut. Also it is appreciated that mild abrasion is not disclosed in Bloch but the extent of abrasion in the nuts is seen to be dependent upon the amount of nuts that are packed into the original processing container. It would have been obvious to one of ordinary skill in the art to utilize the process of Bloch to increase the shelf life of a nut.

Applicant's arguments concerning the rejections set forth in the last office action are persuasive. According the rejections have been dropped.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The caplus abstract to "Texture" describes "bowl-life" without described the process set forth in the claims. The reference to Hickey (3,342,607) describes hydrating and redrying milo cereal grain without described anything with regard to bowl life. The reference to Efstathiou (5,258,189) describes rehydrating cereal with solutions containing vitamins without describing any changes in bowl life and without using "substantially pure water". The reference to Olson (3,976,793) utilizes an aqueous solution of sugar to improve the crispness of cereal but attributes the improvement to sugar crystals. The reference to Fan (4,988,521) applies an aqueous solution containing salt to cereal without describing anything relating to bowl life. The references to Potter teaches drying foods and relates case hardening, porosity and bulk density to the rate of drying of the foods. The reference does not discuss rehydrating cereal, potato chips or nuts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

*Carolyn Paden*  
CAROLYN PADEN 5-14-04  
PRIMARY EXAMINER  
GROUP 1500-1761